IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	CASE NO. 5:16 CR 00263-001
PLAINTIFF,	JUDGE DAN A. POLSTER
v.	**SENTENCING MEMORANDUM**
MARGARET M. DAVIS,	
DEFENDANT.	

Now comes the Defendant, Margaret M. Davis, by and through counsel and hereby submits the following sentencing memorandum for this Court's consideration at the sentencing hearing to be held on March 28, 2017 at 2:00 P.M.

Respectfully submitted,
Anthony Koukoutas, LLC

/s/ Anthony Koukoutas
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Attorney for Defendant

MEMORANDUM IN SUPPORT

BACKGROUND

The Defendant in the instant case is a 56 year old individual with an extensive criminal history consisting primarily of misdemeanors and three felony convictions. She was born in Massillon, Ohio and she is a US citizen.

The Defendant appeared before the Court on November 18, 2017 and entered a plea of guilty to one count of False Statement and Fraud to Obtain Federal Employee's Compensation in violation of 18 USC § 1920. The Court ordered that a Presentence Investigation Report be prepared and that the Defendant was to cooperate with the US Probation Officer preparing the report.

SENTENCING

The seminal case in the sentencing arena is *United States v. Booker*, 534 U.S. 220, 125 Sup.Ct. 738 (2005), wherein the U.S. Supreme Court concluded that two Guideline provisions were unconstitutional: (1) the provision making the Guidelines mandatory, and (2) the appellate review provision that required district judges to impose a sentence within the Guideline range or justify any departure. The Supreme Court's decision in *Booker* rendered the Guidelines advisory and not mandatory. *Booker* at 534 U.S. 220, 125 Sup.Ct. 738, at 246. After Booker the Guidelines are advisory and "a district court's mandate is to impose **'a sentence sufficient, but not greater than necessary, to comply with the purposes'** of section 3553(a) (2)." *United States v. Collington*, 461 F.3d 805, 807 (6th Cir. 2006); citing *United States v. Foreman*, 436 F.3d 638, 644 n.1 (6th Cir. 2006) (emphasis in original).

Section 3553 (a) provides the basis for sentencing in the District Courts of the United States after the decision in *United States v. Booker* and *United States v. Fanfan* (543 U.S. _ 125 S.Ct. 738, 2005). The sentencing guidelines have now been redefined and are now to be considered one of the factors that the District Court takes into account in determining a reasonable sentence for a person charged with felony offenses. The guidelines are no longer mandatory.

In sentencing the Defendant, the Court is now required to impose a sentence, that is sufficient, but not greater than necessary to achieve the purposes of sentencing as set forth in 18 USC Section 3553 (a)(2). A sentence should:

(a) reflect the seriousness of the offense, to promote respect for the law and provide just punishment for the offense;

(b) afford adequate deterrence to criminal conduct;

(c) protect the public from further crimes of the Defendant; and

(d) provide the Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In considering the purposes of the statute, the Court must consider the following seven factors:

(1) the nature and circumstance of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed to further the purposes set forth above;

(3) the kinds of sentences available;

(4) the kinds of sentences and the sentencing range established for these offenses;

(5) any pertinent policy statements;

(6) the need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims for this offense. See 18 USC Section 3553 (a).

Sentencing Courts now have discretion to impose a sentence that is sufficient but not greater than necessary to comply with the purposes of sentencing as set forth above. This method described above became necessary after the Supreme Court in *Booker* deleted the mandatory application of the guidelines in sentencing. In doing so, the Court now can consider the guidelines as one of many factors in imposing a sentence.

I. DEFENDANT'S HISTORY OF ADDICTION

Unfortunately, the Defendant comes before the Court with a long history of addiction to illegal substances and this addiction led to many of the criminal convictions that are on her record. The Defendant's first use of crack cocaine occurred in 1998 and did not end until 2012. She informed the PSR writer that she would use several times a week. Moreover, the Defendant tested positive for cocaine while at the Oriana House but has since been clean.

The Defendant's record consists primarily of Thefts and Theft-related offenses. Most of these occurred during the 1998 to 2012 period when she was using crack cocaine on an almost daily basis. These offenses occurred because the Defendant was trying to support her habit. Moreover, the undersigned knows this to be true because he represented her on a number of those offenses and has known the Defendant for over 20 years.

It is also important to note that prior to 2001 the Defendant did not have a criminal history. She went for many years as a law-abiding citizen before becoming wrapped up in her crack cocaine addiction. In fact, the Defendant was 40 years old when she committed her first criminal offense. Therefore, it is evident that the Defendant's addiction played a big part in her criminal conduct.

II. MENTAL HEALTH HISTORY

The Defendant also has a long history of mental health problems that stem from an incident that occurred in 1993 when she worked at the US Post Office. She was diagnosed with Post-Traumatic Stress Disorder, severe depression, anxiety, and panic attacks. Moreover, she applied and was awarded disability because of the mental health issues that developed in 1993.

The Defendant recognizes that she must comply with all orders regarding the proper taking of medication and seeing mental health professionals for treatment. This is why she decided to have an assessment done at St. Thomas Hospital and is currently on a waiting list for individual counseling. Moreover, she has continued to attend her counseling at Phoenix Rising.

III. ACCEPTANCE OF RESPONSIBILITY BY DEFENDANT

The Defendant would also ask the Court to take into consideration her acceptance of responsibility in this case. She has not tried to hide what she did but has expressed her shame in doing something that has caused her to be charged with a federal offense. The Defendant realizes that she should have marked the correct box informing the Government that she was incarcerated thereby making sure that her benefits would stop. She did not do so and accepts that she alone is responsible for her actions.

For all the reasons expressed hereinabove, the Defendant would respectfully request that the Court take into account all the considerations in this matter, and impose a sentence that is sufficient, but not greater than necessary to achieve the purposes of sentencing.

Respectfully submitted,

/s/ Anthony Koukoutas
Anthony Koukoutas
Attorney for Defendant

CERTIFICATE OF SERVICE

On March 27, 2017, the foregoing ***Sentencing Memorandum*** was filed by electronic means pursuant to F.R.C.P. 5(b)(2)(D). Notice of this filing will be sent to all Counsel indicated on the electronic receipt by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/ Anthony Koukoutas
Anthony Koukoutas
Attorney for Defendant